

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

**The Consumers of New England**

**v.**

**Docket No. EL01-39-000**

**New England Power Pool**

**MOTION TO INTERVENE AND COMMENTS OF  
THE NEW ENGLAND CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS**

In accordance with Rules 206 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 396.206, 395.214 (2000), and the Commission’s February 26, 2001 Notice of Complaint, the New England Conference of Public Utilities Commissioners (“NECPUC”) hereby submits its motion to intervene and comments in support of the complaint filed by The Consumers of New England (Complainants) in the captioned proceeding. As discussed herein, while NECPUC urges the Commission to take the measures identified in its protest to ISO New England’s RTO filing needed to ensure full RTO compliance with Order No. 2000, NECPUC supports the Section 206 relief sought by Complainants as necessary interim steps to relieve decisional gridlock and enhance ISO New England’s independence.

**I.**

All correspondence and communications regarding this matter should be addressed to the following:

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## II.

NECPUC is a not-for-profit corporation comprising public utility commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Formed fifty years ago and funded by the New England states, NECPUC's mission is the promotion of regional cooperation and effective communication on all public utility matters within New England. As a representative of New England's interests concerning the electric industry, NECPUC has a vital stake in the operation of NEPOOL.

## III.

### **Description of the Filing**

On February 22, 2001, the Consumers of New England filed a complaint with the Commission requesting immediate reform of the New England Power Pool governance. ("Complaint"). Complainants allege that the governance provisions of the NEPOOL Agreement have become unjust and unreasonable and that the Agreement must therefore be modified under Section 206 of the FPA. The complaint was prompted by the May 10, 1999 filing by NEPOOL of its 42<sup>nd</sup> Amendment to the Restated NEPOOL Agreement, restructuring the NEPOOL Governance. The restructuring of the NEPOOL Governance eventually lead to increased participation by End-Users, and to the revelation of apparent flaws in the Governance structure, the subject of the Complaint and this filing. The Governance structure flaws not only impede the overall ability of NEPOOL to function but most critically its ability to implement needed market reforms. This Complaint is not the Complainants' first attempt to reform NEPOOL Governance. In November 2000, ICEG presented a set of Near – Term Governance Reform Proposals to the NEPOOL Participants Committee for comments and discussion. In December

2000, a final proposal was presented to the Participants Committee, but NEPOOL decided to defer its consideration.

The Complainants propose that:

- the voting thresholds for proposing changes to market rules and making certain other changes to the NEPOOL Agreement and Tariff be reduced from 66.7 percent to 60 percent;
- the current 66.7 percent threshold be maintained for changes to governance provisions of the NEPOOL Agreement and provisions of the tariff not specifically listed as subject to the lower voting thresholds;
- the automatic stay of NEPOOL actions upon appeal to the review board be eliminated;
- the implementation of a process to allow default delegation of Section 205 filing rights to the ISO; and
- the delegation of review and approval of facility interconnection requests to ISO-NE.

NECPUC's February 22, 2001 protest to the Order No. 2000 compliance filing by ISO New England and the NEPOOL transmission owners in Docket No. RT01-86 set forth its concerns that the filing both preserved procedural gridlock and failed to satisfy the independence criterion of Order No. 2000. NECPUC continues to believe that its proposal for an independent regional board, with, inter alia, full powers to devise market rules, is the only proposal before the Commission that satisfies the independence objectives of Order No. 2000 and distinguishes permissible stakeholder *input* from independence-compromising stakeholder *governance*. To qualify as an RTO, an entity must, at a minimum, satisfy the independence condition. As discussed below, while the changes sought by Complainants would not fully satisfy the objectives of Order No. 2000, they would both reduce the likelihood of governance gridlock and enhance ISO New England's independence. Accordingly, NECPUC supports the relief sought in the complaint as a reasonable interim measure in addressing certain problems with the current

NEPOOL governance structure. It should not, however, be treated as a substitute for permanent reform.

#### IV.

#### **Changing the Voting Thresholds for Making Changes to Market Rules Will Greatly Reduce the Gridlock that Has Prevented Timely and Effective NEPOOL Action**

The Complainants propose the reduction of thresholds for NEPOOL approval of changes to the market rules and certain specific provisions of the NEPOOL Agreement and Tariff that address market conditions. Complainants state that the current threshold for making changes to market rules has caused unnecessary delays in making needed market reforms, citing the CMS/MSS process as an example of the delay caused by requiring a supermajority vote.

NECPUC supports the Complainants' proposal to reduce the voting threshold for approving changes to market rules. As a result of the supermajority requirement, a number of needed market reforms have either failed or been delayed significantly. The now seemingly interminable delay that has marked the implementation of CMS/MSS is the most dramatic example of a failure by NEPOOL to act quickly.

While NECPUC does not agree that this reform will solve all of the governance problems in the New England region, as discussed in the NECPUC and Maine RTO filings, NECPUC believes that lowering the voting threshold is an important first step in moving needed market reforms forward. Complainants have proposed that the lower voting threshold not apply to votes concerning changes to the NEPOOL governance structure. NECPUC agrees with this suggestion. One of the key reasons for reform of the NEPOOL governance structure -- predating the formation of the ISO -- was to reduce the voting power of NEPOOL's transmission owners. If NEPOOL is to remain the vehicle for stakeholder input into ISO or RTO decisions, it must

remain a representative body. Accordingly, a higher threshold is appropriate for issues regarding NEPOOL (as opposed to ISO) governance.

## V.

### **The Automatic Stay Provision is Unnecessary and Causes Delays in Implementing Market Reforms.**

NECPUC agrees with the Complainants that, as long as NEPOOL has a governance role, i.e., until there is a fully functioning, independent RTO, the provision of the NEPOOL Agreement directing automatic stay of NEPOOL decisions upon appeal to the ISO Review Board should be eliminated. This provision has prevented NEPOOL from filing proposed changes to market rules even when the change has passed the supermajority threshold. While in most circumstances the ISO has stepped in under its emergency authority to make the filing at the Commission, this provision simply gives opponents of a measure one more chance to prevent the measure from moving forward. NECPUC believes that removing the automatic stay will be an important step in improving the effectiveness of NEPOOL governance and implementing needed market reforms.

## VI.

### **The Process for Delegation to the ISO of 205 Filing Rights Should Help to Bring Proposed Changes Before FERC in a More Timely Manner**

The Complainants suggest a process through which the ISO, in addition to its existing section 205 and 206 filing authority, may file rule changes with the FERC with little more than a simple majority support from NEPOOL. Under the Complainants' proposal, the ISO must provide to members of the appropriate lower committee a written proposal that includes a

- concise summary of the problem to be solved and the need for solving it;

- description of the specific goals to be addressed in any solution;
- a detailed discussion of how neighboring regions are dealing with the problem and how the ISO solution is similar to or different from the other region's solutions;
- a description of the impact of the proposal on market efficiency, reliability and equity among participants; and
- a technical paper discussing the above items with the technical staff member authoring the paper available at the meeting where the proposal is presented.

The proposal must be distributed five days before presentation to the lower committee.

If the lower committee to which the proposal is presented approves the vote by 51 percent, the 90-day clock starts. During the 90-day period, NEPOOL may by vote of 60 percent adopt the ISO proposal, adopt a modified or alternative proposal or reject the proposal. If NEPOOL fails to take one of the steps listed above within the 90-day period, the ISO may call for a vote on its proposal. If 53 percent vote in favor of the ISO proposal, the ISO acts in the place of NEPOOL in filing the proposal under Section 205 of the Federal Power Act. If the ISO cannot persuade 53 percent of NEPOOL to adopt its proposal, the ISO cannot act in NEPOOL's place in filing the proposal under Section 205, but it retains all of its existing section 205 and 206 filing authority. The Complainants state that this authority is in addition to the ISO's existing emergency rule filing authority. Thus, NECPUC interprets this prohibition as limiting the ISO from filing a change rejected by NEPOOL only to the extent that the circumstances would not otherwise have been within the scope of its emergency authority.

Complainants' proposal does not provide ISO New England with the full measure of decisionmaking independence ultimately required by the Commission's orders. NECPUC nonetheless supports this proposal as an appropriate *interim* measure to bring ISO proposals for market reforms before the Commission in a more timely fashion. NECPUC notes, however, that

the proposed 90-day time period may not move the process forward as quickly as is necessary to respond to needed market changes and urges the Commission to consider a 60-day period instead. NECPUC further suggests that the Commission clarify that the process should result in either a decision or delegation by NEPOOL at the end of the selected time frame.

## VII.

### **The ISO is the Appropriate Entity to Review Interconnection Requests**

NECPUC agrees with the Complainants that ISO-NE rather than NEPOOL should review interconnection requests and that the Commission end the practice of permitting Market Participants, who are often competitors of one another, to vote on Participant requests for facility interconnection. Because the ISO is an independent entity charged with operation and reliability responsibilities, it is appropriate for the ISO rather than a stakeholder organization to consider interconnection requests based on considerations of reliability.

## VIII.

Based on the foregoing, NECPUC has a direct and substantial interest in this proceeding and may be affected by its ultimate determination. NECPUC will not be represented adequately by any other party and may be adversely affected or bound without opportunity to present its position unless it is permitted to participate fully in the proceedings.

WHEREFORE, NECPUC respectfully requests that it be permitted to intervene and hereby submits its comments in support of the complaint filed in the captioned proceeding.

Respectfully submitted,

NEW ENGLAND CONFERENCE OF PUBLIC  
UTILITIES COMMISSIONERS

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Its Attorneys

DATED: March 14, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 14th day of March, 2001.

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Harvey L. Reiter



